



General Assembly

February Session, 2008

Raised Bill No. 695

LCO No. 3342

03342_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING INVESTIGATORY GRAND JURIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (2) of section 54-47b of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2008*):

4 (2) "Crime or crimes" means (A) any crime or crimes involving
5 corruption in the executive, legislative or judicial branch of state
6 government or in the government of any political subdivision of the
7 state, (B) fraud by a vendor of goods or services in the medical
8 assistance program under Title XIX of the Social Security Act
9 Amendments of 1965, as amended, (C) any violation of chapter 949c,
10 (D) any violation of the election laws of the state, (E) any felony
11 involving the unlawful use or threatened use of physical force or
12 violence committed with the intent to intimidate or coerce the civilian
13 population or a unit of government, [and] (F) any violation of
14 subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-
15 70a, 53a-70c, 53a-71, 53a-72a, 53a-72b, 53a-86, 53a-87, 53a-88, 53a-90a,
16 53a-196a, 53a-196b, 53a-196c, 53a-196d, 53a-196e or 53a-196f where the
17 victim of the offense is a child under thirteen years of age, and (G) any

18 other class A, B or C felony or any unclassified felony punishable by a
 19 term of imprisonment in excess of five years for which the Chief State's
 20 Attorney or state's attorney demonstrates that [he or she has no other
 21 means of obtaining sufficient information as to whether a crime has
 22 been committed or the identity of the person or persons who may have
 23 committed a crime] the interests of justice require the use of an
 24 investigatory grand jury.

25 Sec. 2. Section 54-47c of the general statutes is repealed and the
 26 following is substituted in lieu thereof (*Effective October 1, 2008*):

27 (a) Any judge of the Superior Court, Appellate Court or Supreme
 28 Court, the Chief State's Attorney in consultation with the state's
 29 attorney or state's attorneys in the judicial district or districts where a
 30 crime or crimes may have been committed or a state's attorney in
 31 consultation with the Chief State's Attorney may make application to a
 32 panel of judges for an investigation into the commission of a crime or
 33 crimes whenever such applicant has reasonable belief that the
 34 administration of justice requires that an investigation be conducted to
 35 determine whether or not there is probable cause to believe that a
 36 crime or crimes have been committed or to enable the Chief State's
 37 Attorney or a state's attorney to determine whether or not there is
 38 sufficient evidence to convict a person or persons for a crime or crimes
 39 that have been committed. If such application is made by the Chief
 40 State's Attorney or a state's attorney, such application shall contain a
 41 statement under oath that the consultation required by this subsection
 42 has occurred.

43 (b) Each application for an investigation into the commission of a
 44 crime or crimes shall be made in writing upon oath or affirmation to a
 45 panel of judges. Each application shall include the following
 46 information: (1) The identity of the applicant and his authority to make
 47 such application; (2) a full and complete statement of the facts and
 48 circumstances relied upon by the applicant to justify his reasonable
 49 belief that the investigation [will] may lead to a finding of probable

50 cause that a crime or crimes have been committed or enable the Chief
 51 State's Attorney or a state's attorney to determine whether or not there
 52 is sufficient evidence to convict a person or persons for a crime or
 53 crimes that have been committed; and (3) a full and complete
 54 statement of the facts concerning all previous applications known to
 55 the applicant, made to any panel of judges, for investigation of any one
 56 or more of the same criminal offenses involving any of the same
 57 persons specified in the application, including the action taken by the
 58 panel on each such application. The panel of judges may require such
 59 additional testimony or documentary evidence in support of facts in
 60 the application as it deems necessary. Such additional testimony shall
 61 be transcribed.

62 (c) If the application is made by the Chief State's Attorney or a
 63 state's attorney, it shall also include (1) a full and complete statement
 64 of the status of the investigation and of the evidence collected as of the
 65 date of such application, (2) [if other normal investigative procedures
 66 have been tried with respect to the alleged crime, a full and complete
 67 statement specifying the other normal investigative procedures that
 68 have been tried and the reasons such procedures have failed or the
 69 specific nature of the alleged crime or the nature of the investigation
 70 that leads the applicant to reasonably conclude that the use of normal
 71 investigative procedures would not result in the obtaining of
 72 information that would advance the investigation or would fail to
 73 secure and preserve evidence or testimony that might otherwise be
 74 compromised, (3) if other normal investigative procedures have not
 75 been tried, a full and complete statement of the reasons such
 76 procedures reasonably appear to be unlikely to succeed if tried or be
 77 too dangerous to employ, and (4)] a summary of the investigative
 78 procedures used and the reasons the applicant believes such
 79 procedures to be inadequate, (3) a statement as to how the interests of
 80 justice require the use of an investigatory grand jury, including the
 81 reasons why the ability to compel the attendance of witnesses and the
 82 production of documents and other tangible evidence will
 83 substantially aid in the investigation, and (4) a full and complete

84 statement of the reasons for the applicant's belief that the appointment
85 of an investigatory grand jury and the investigative procedures
86 employed by such investigatory grand jury [will] may lead to a finding
87 of probable cause that a crime or crimes have been committed or
88 enable the Chief State's Attorney or a state's attorney to determine
89 whether or not there is sufficient evidence to convict a person or
90 persons for a crime or crimes that have been committed.

91 (d) The panel may approve the application and order an
92 investigation into the commission of a crime or crimes if it finds that
93 (1) the administration of justice requires that an investigation be
94 conducted to determine whether or not there is probable cause to
95 believe that a crime or crimes have been committed or to enable the
96 Chief State's Attorney or a state's attorney to determine whether or not
97 there is sufficient evidence to convict a person or persons for a crime or
98 crimes that have been committed, (2) if the application was made by
99 the Chief State's Attorney or a state's attorney, [other normal
100 investigative procedures with respect to the alleged crime have been
101 tried and have failed or reasonably appear to be unlikely to succeed if
102 tried or be too dangerous to employ or, due to the specific nature of
103 the alleged crime or the nature of the investigation, it is reasonable to
104 conclude that the use of normal investigative procedures would not
105 result in the obtaining of information that would advance the
106 investigation or would fail to secure and preserve evidence or
107 testimony that might otherwise be compromised] the interests of
108 justice require the use of an investigatory grand jury including the
109 reasons why the ability to compel the attendance of witnesses and the
110 production of documents and other tangible evidence will
111 substantially aid in the investigation, and (3) the investigative
112 procedures employed by an investigatory grand jury appear likely to
113 succeed in determining whether or not there is probable cause to
114 believe that a crime or crimes have been committed or in enabling the
115 Chief State's Attorney or a state's attorney to determine whether or not
116 there is sufficient evidence to convict a person or persons for a crime or
117 crimes that have been committed.

118 Sec. 3. Section 54-47d of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective October 1, 2008*):

120 (a) If the panel approves the application and orders an investigation
121 into the commission of a crime or crimes, the Chief Court
122 Administrator shall (1) appoint an investigatory grand jury to conduct
123 the investigation, and (2) designate the court location in the judicial
124 district where any motions to quash and any contempt proceedings
125 shall be heard and any findings and records of the investigation shall
126 be filed. The location of the investigatory grand jury shall be in the
127 judicial district where the crime or crimes being investigated were
128 committed unless the panel, because of the circumstances of the case,
129 recommends that it be conducted elsewhere.

130 (b) Each order authorizing the investigation into the commission of
131 a crime or crimes by the panel shall specify: (1) The date of issuance of
132 the order, (2) the period of time within which the investigation is to be
133 conducted, provided in no event shall the investigation be longer than
134 [six] twelve months from the date the Chief Court Administrator
135 appoints the investigatory grand jury to conduct the investigation,
136 unless an application for an extension of time is filed and granted
137 pursuant to subsection (c) of this section, (3) the scope of the
138 investigation, and (4) the panel's reasons for finding that (A) the
139 administration of justice requires that an investigation be conducted to
140 determine whether or not there is probable cause to believe that a
141 crime or crimes have been committed or to enable the Chief State's
142 Attorney or a state's attorney to determine whether or not there is
143 sufficient evidence to convict a person or persons for a crime or crimes
144 that have been committed, (B) [if the application was made by the
145 Chief State's Attorney or a state's attorney, other normal investigative
146 procedures with respect to the alleged crime have been tried and have
147 failed or reasonably appear to be unlikely to succeed if tried or be too
148 dangerous to employ, or, due to the specific nature of the alleged crime
149 or the nature of the investigation, it is reasonable to conclude that the
150 use of normal investigative procedures would not result in the

151 obtaining of information that would advance the investigation or
 152 would fail to secure and preserve evidence or testimony that might
 153 otherwise be compromised] the interests of justice require the use of an
 154 investigatory grand jury including the reasons why the ability to
 155 compel the attendance of witnesses and the production of documents
 156 and other tangible evidence will substantially aid in the investigation,
 157 and (C) the investigative procedures employed by the investigatory
 158 grand jury appear likely to succeed in determining whether or not
 159 there is probable cause to believe that a crime or crimes have been
 160 committed or in enabling the Chief State's Attorney or a state's
 161 attorney to determine whether or not there is sufficient evidence to
 162 convict a person or persons for a crime or crimes that have been
 163 committed. The panel shall retain a copy of the order and the original
 164 application and shall transmit to the investigatory grand jury,
 165 appointed pursuant to subsection (a) of this section, the original order
 166 and a copy of the application filed with the panel.

167 (c) The investigatory grand jury may make an application to the
 168 panel of judges for an extension of time within which to conduct its
 169 investigation or for an amendment to the scope of its investigation. The
 170 application for extension or amendment shall set forth the reasons for
 171 the [necessity of such] extension or amendment. No more than two
 172 extensions or amendments of an order may be granted by the issuing
 173 panel. The period of any extension shall be no longer than the panel
 174 deems necessary to achieve the purposes for which it was granted and
 175 in no event shall any extension be for a period longer than six months.

176 Sec. 4. Section 54-47e of the general statutes is repealed and the
 177 following is substituted in lieu thereof (*Effective October 1, 2008*):

178 Any order authorizing the investigation into the commission of a
 179 crime or crimes and any application filed with the panel pursuant to
 180 section 54-47c, as amended by this act, or subsection (c) of section 54-
 181 47d, as amended by this act, shall be sealed. The panel shall submit to
 182 the Chief Court Administrator a summary of the scope of the

183 investigation, any recommendation as to the court location at which
 184 any motions to quash and any contempt proceedings are to be heard
 185 and the finding and record of the investigation are to be filed. Such
 186 summary shall not be public unless the panel determines, by majority
 187 vote, that [such summary be sealed for purposes of (1) ensuring]
 188 making the summary public will not (1) jeopardize the public safety of
 189 any individual, (2) [ensuring that the investigation would not be
 190 adversely affected] adversely affect the investigation, or (3) [complying
 191 with] violate other provisions of the general statutes or rules of court
 192 which prohibit disclosure of such information. Any investigation by
 193 the investigatory grand jury shall be conducted in [private] secret,
 194 provided the panel, by a majority vote, may order the investigation or
 195 any portion thereof to be conducted in public when such disclosure or
 196 order is deemed by the panel to be in the public interest.

197 Sec. 5. Section 54-47f of the general statutes is repealed and the
 198 following is substituted in lieu thereof (*Effective October 1, 2008*):

199 (a) The investigatory grand jury, in conducting the investigation,
 200 may (1) seek the assistance of the Chief State's Attorney or state's
 201 attorney who filed the application, or his designee, (2) appoint [an
 202 attorney] the Chief State's Attorney or the state's attorney in whose
 203 jurisdiction the crime or crimes are believed to have been committed to
 204 provide assistance if a judge of the Superior Court, Appellate Court or
 205 Supreme Court filed the application or (3) appoint any other attorney
 206 to provide assistance when necessary in the interest of justice.

207 (b) The attendance of witnesses and the production of documents at
 208 such investigation may be compelled by subpoena, signed by any
 209 official authorized to issue such process. No subpoena may be issued
 210 by the Chief State's Attorney or a state's attorney appointed to provide
 211 assistance to the investigatory grand jury pursuant to subdivision (1)
 212 or (2) of subsection (a) of this section unless the investigatory grand
 213 jury approves the issuance of such subpoena. In determining whether
 214 to approve the issuance of such subpoena, the investigatory grand jury

215 may consider whether the person to be summoned to appear and give
 216 testimony or produce documents has information relevant to the
 217 investigation and whether compliance by such person would be
 218 unduly burdensome. Any subpoena issued pursuant to this subsection
 219 shall contain a notice advising the person summoned (1) whether such
 220 person is a target of the investigation, (2) that such person has the right
 221 to have counsel present when he is being examined by the
 222 investigatory grand jury and to consult with such counsel, (3) that if
 223 such person is indigent, such person has the right to have counsel
 224 appointed to represent him, and (4) that such person has the right not
 225 to be compelled to be a witness, or give evidence, against himself.

226 (c) Any person summoned to appear and give testimony or produce
 227 documents pursuant to subsection (b) of this section may apply to the
 228 court of the judicial district designated by the Chief Court
 229 Administrator pursuant to subsection (a) of section 54-47d, as
 230 amended by this act, for the appointment of counsel to represent such
 231 person before the investigatory grand jury. Such person shall file with
 232 the court a sworn financial affidavit of indigency in such form as shall
 233 be prescribed by the Judicial Department. If the court determines that
 234 such person is indigent, it shall appoint counsel to represent such
 235 person. The Judicial Department shall maintain a list of trial counsel
 236 experienced in advising or defending defendants in criminal
 237 proceedings whom the court may appoint to represent persons
 238 summoned to appear and give testimony or produce documents
 239 before an investigatory grand jury. The cost for such counsel shall be
 240 established by, and paid from funds appropriated to, the Judicial
 241 Department.

242 [(c)] (d) If any witness properly summoned fails to appear or to
 243 produce any documents included in the subpoena, or if he fails to
 244 answer any proper question, the investigatory grand jury conducting
 245 the investigation may report the matter to the state's attorney for the
 246 judicial district which has been designated in subsection (a) of section
 247 54-47d, as amended by this act, unless such state's attorney is the

248 applicant or has been appointed to assist in such investigation, in
 249 which case the investigatory grand jury shall report the matter to the
 250 Chief State's Attorney, and such state's attorney or Chief State's
 251 Attorney, as the case may be, may file a complaint setting forth the
 252 facts at any criminal session of the superior court in such judicial
 253 district. The court shall thereupon issue a citation to the witness to
 254 appear before the court and show cause why he should not be
 255 punished as for a contempt, and if, after hearing, the court finds that
 256 he failed to appear without due cause or failed to produce any
 257 document properly to be presented to the investigatory grand jury or
 258 failed to answer any proper question in the course of the investigation,
 259 it may punish him as it might a witness failing to appear, to produce a
 260 document properly to be considered or to answer a proper question
 261 before the court.

262 ~~[(d)]~~ (e) Witnesses may be examined by the investigatory grand jury
 263 conducting the investigation or by any attorney or attorneys appointed
 264 by such investigatory grand jury for such purpose. At the hearing, the
 265 official conducting the investigation shall inform the witness that he
 266 has the right to have counsel present and to consult with such counsel.

267 ~~[(e)]~~ (f) The official conducting the investigation shall inform any
 268 witness who is a target of the investigation that he is a target and shall
 269 advise him that he has the right under the Constitution of the United
 270 States and the Constitution of Connecticut not to be compelled to be a
 271 witness, or to give evidence, against himself.

272 ~~[(f)]~~ (g) Any attorney appointed to assist in conducting the
 273 investigation shall disclose to the investigatory grand jury any
 274 exculpatory information or material in his possession, custody or
 275 control concerning any person who is a target of the investigation.

276 ~~[(g)]~~ (h) An official stenographer of the Superior Court or his
 277 assistant shall record any testimony taken at the investigation.

278 Sec. 6. Section 54-47g of the general statutes is repealed and the

279 following is substituted in lieu thereof (*Effective October 1, 2008*):

280 (a) Within sixty days of the conclusion of the investigation, the
 281 investigatory grand jury conducting such investigation shall file its
 282 finding with the court of the judicial district designated by the Chief
 283 Court Administrator pursuant to subsection (a) of section 54-47d, as
 284 amended by this act, and shall file a copy of its finding with the panel
 285 and with the Chief State's Attorney or a state's attorney if such Chief
 286 State's Attorney or state's attorney made application for the
 287 investigation. The stenographer shall file any record of the
 288 investigation with the court of the judicial district designated by the
 289 Chief Court Administrator pursuant to subsection (a) of section 54-47d,
 290 as amended by this act, and the panel and the Chief State's Attorney or
 291 a state's attorney, if such Chief State's Attorney or state's attorney
 292 made application for the investigation, shall have access to such record
 293 upon request made to the clerk of the court without a hearing. Such
 294 finding shall state whether or not there is probable cause to believe
 295 that a crime or crimes have been committed and whether or not there
 296 is probable cause to believe that a person or persons committed such
 297 crime or crimes. Except as otherwise provided in this section, any part
 298 of the record of the investigation not disclosed with the finding
 299 pursuant to subsection (b) of this section shall be sealed, provided any
 300 person may file an application with the panel for disclosure of any
 301 such part of the record. Upon receipt of such application, the panel
 302 shall, after notice, hold a hearing and the panel, by a majority vote,
 303 may disclose any such part of the record when such disclosure is
 304 deemed by the panel to be in the public interest, except that no part of
 305 the record shall be disclosed which contains allegations of the
 306 commission of a crime by an individual if the investigatory grand jury
 307 failed to find probable cause that such individual committed such
 308 crime unless such individual requests the release of such part of the
 309 record. Any person aggrieved by an order of the panel shall have the
 310 right to appeal such order by filing a petition for review with the
 311 Appellate Court within seventy-two hours from the issuance of such
 312 order.

313 (b) The finding of the investigation shall be open to public
314 inspection and copying at the court where it has been filed seven
315 calendar days after it has been filed, unless within that period the
316 Chief State's Attorney or a state's attorney with whom the finding was
317 filed files a motion with the investigatory grand jury requesting that a
318 part or all of such finding not be so disclosed. The finding may include
319 all or such part of the record as the investigatory grand jury may
320 determine, except that no part of the record shall be disclosed which
321 contains allegations of the commission of a crime by an individual if
322 the investigatory grand jury failed to find probable cause that such
323 individual committed such crime unless such individual requests the
324 release of such part of the record. In such event as much of the finding
325 as has not been sought to be withheld from disclosure shall be
326 disclosed promptly upon the expiration of said seven-calendar-day
327 period.

328 (c) Within fifteen calendar days of the filing of such motion, the
329 investigatory grand jury shall conduct a hearing. The investigatory
330 grand jury shall give written notice of such hearing to the person filing
331 such motion and any other person the investigatory grand jury deems
332 to be an interested party to the proceedings, which may include, but
333 not be limited to, persons who testified or were the subject of
334 testimony before the investigatory grand jury. Within five calendar
335 days of the conclusion of the hearing, the investigatory grand jury
336 shall render its decision, and shall send copies thereof to all those to
337 whom it gave notice of the hearing. It shall deny any such motion
338 unless it makes specific findings of fact on the record that there is a
339 substantial probability that one of the following interests will be
340 prejudiced by publicity that nondisclosure would prevent, and that
341 reasonable alternatives to nondisclosure cannot adequately protect that
342 interest: (1) The right of a person to a fair trial; (2) the prevention of
343 potential defendants from fleeing; (3) the prevention of subornation of
344 perjury or tampering with witnesses; [or] (4) the protection of the lives
345 and reputations of innocent persons which would be significantly
346 damaged by the release of uncorroborated information; and (5) the

347 continued effectiveness of future investigatory grand juries. Any order
348 of nondisclosure shall be drawn to protect the interest so found.

349 (d) Any person aggrieved by an order of the investigatory grand
350 jury shall have the right to appeal such order by filing a petition for
351 review with the Appellate Court within seventy-two hours from
352 issuance of such order.

353 (e) The Appellate Court shall provide an expedited hearing on such
354 petition in accordance with such rules as the judges of the Appellate
355 Court may adopt, consistent with the rights of the petitioner and the
356 parties.

357 (f) Notwithstanding the existence of an order of nondisclosure
358 under this section, any witness may apply in writing to the presiding
359 judge of the criminal session of the court of the judicial district wherein
360 the record of the investigation has been filed, or his designee, for
361 access to and a copy of the record of his own testimony. Any witness
362 shall be allowed access, at all reasonable times, to the record of his own
363 testimony and be allowed to obtain a copy of such record unless said
364 judge or his designee finds after a hearing and for good cause shown
365 that it is not in the best interest of justice to allow the witness to have
366 access to and a copy of the record of his testimony.

367 (g) Notwithstanding the existence of an order of nondisclosure
368 under this section, the presiding judge of the criminal session of the
369 court of the judicial district wherein the record of the investigation has
370 been filed, or his designee, shall grant any written request of a person
371 accused of a crime as a result of the investigation to have access, at all
372 reasonable times, to the record of his own testimony and to obtain a
373 copy of such record.

374 Sec. 7. (NEW) (*Effective October 1, 2008*) Not later than January 1,
375 2010, the Chief Court Administrator, the Chief State's Attorney and the
376 Chief Public Defender shall submit a report to the General Assembly,
377 in accordance with section 11-4a of the general statutes, concerning the

378 implementation of the provisions of subdivision (2) of section 54-47b of
 379 the general statutes, and sections 54-47c to 54-47g, inclusive, of the
 380 general statutes or the 2008 supplement to the general statutes, as
 381 amended by this act, for the one-year period ending October 1, 2009.
 382 Such report shall include, but not be limited to, the number of
 383 applications for an investigation into the commission of a crime or
 384 crimes filed pursuant to section 54-47c of the general statutes, as
 385 amended by this act, the number of investigatory grand juries
 386 appointed pursuant to section 54-47d of the general statutes, as
 387 amended by this act, the judicial districts in which investigatory grand
 388 juries were appointed, any problems encountered in the procedure for
 389 making an application for an investigation, in the standards for
 390 approving an application or in the procedure for conducting an
 391 investigation, any recommendations for legislation and any
 392 recommendations for additional resources for conducting such
 393 investigations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	54-47b(2)
Sec. 2	<i>October 1, 2008</i>	54-47c
Sec. 3	<i>October 1, 2008</i>	54-47d
Sec. 4	<i>October 1, 2008</i>	54-47e
Sec. 5	<i>October 1, 2008</i>	54-47f
Sec. 6	<i>October 1, 2008</i>	54-47g
Sec. 7	<i>October 1, 2008</i>	New section

Statement of Purpose:

To revise the investigatory grand jury procedure.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]